

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0892, Kimberly Balamotis v. Town of Plaistow Board of Adjustment, the court on October 19, 2005, issued the following order:

The defendant, the Plaistow Zoning Board of Adjustment (ZBA), appeals an order of the superior court reversing the ZBA's denial of a variance requested by the plaintiff, Kimberly Balamotis. The ZBA argues that the court erred in ruling that the plaintiff did not need to establish hardship and in substituting its judgment for that of the ZBA. We vacate and remand.

We will uphold the superior court's decision unless it is unsupported by the evidence or legally erroneous. Boccia v. City of Portsmouth, 151 N.H. 85, 89 (2004). The superior court shall not set aside or vacate the ZBA's decision except for errors of law, unless the court is persuaded by the balance of the probabilities, on the evidence before it, that the decision is unreasonable. *Id.*

The requirements for a variance are statutory in origin. See RSA 674:33, I(b) (1996). To obtain a variance, a petitioner must show: (1) the variance will not be contrary to the public interest; (2) special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship; (3) the variance is consistent with the spirit of the ordinance; (4) substantial justice is done; and (5) the variance will not diminish the value of surrounding properties. *Id.*

In its order, the superior court stated: "Under the law, the plaintiff is not required to show a hardship." Read in isolation, this statement conflicts with the requirements imposed by statute. We therefore vacate the superior court's order and remand the case for further consideration.

Vacated and remanded.

NADEAU, DALIANIS and DUGGAN, JJ., concurred.

**Eileen Fox,
Clerk**